

UNITED STATES COURT OF APPEALS
FOR THE SECOND CIRCUIT

SUMMARY ORDER

THIS SUMMARY ORDER WILL NOT BE PUBLISHED IN THE FEDERAL REPORTER AND MAY NOT BE CITED AS PRECEDENTIAL AUTHORITY TO THIS OR ANY OTHER COURT, BUT MAY BE CALLED TO THE ATTENTION OF THIS OR ANY OTHER COURT IN A SUBSEQUENT STAGE OF THIS CASE, IN A RELATED CASE, OR IN ANY CASE FOR PURPOSES OF COLLATERAL ESTOPPEL OR RES JUDICATA.

At a stated term of the United States Court of Appeals for the Second Circuit, held at the Thurgood Marshall United States Courthouse, Foley Square, in the City of New York, on the 9th day of August, two thousand and six.

PRESENT:

HON. WILFRED FEINBERG,
HON. JON O. NEWMAN,
HON. CHESTER J. STRAUB,
Circuit Judges.

Xiao Mei Lin, _____
_____*Petitioner,*

-v.-

No. 04-5387-ag
NAC

Alberto R. Gonzales¹,
Respondent.

FOR PETITIONER: Thomas V. Massucci, New York, New York.
FOR RESPONDENT: Stephen J. Murphy, United States Attorney for the Eastern District
of Michigan, Leslie Matuja Wizner, Assistant United States
Attorney, Detroit, Michigan.

¹Pursuant to Federal Rule of Appellate Procedure 43(c)(2), Attorney General Alberto R. Gonzales is automatically substituted for former Attorney General John Ashcroft.

1
2 UPON DUE CONSIDERATION of this petition for review of a decision of the Board of
3 Immigration Appeals (“BIA”), it is hereby ORDERED, ADJUDGED, AND DECREED that the
4 petition for review is DENIED.

5 Xiao Mei Lin (A95-455-445) petitions for review of the BIA’s September 2004 decision
6 in which the BIA affirmed Immigration Judge (“IJ”) Philip L. Morace’s order denying Lin’s
7 applications for asylum, withholding of removal and Convention Against Torture (“CAT”) relief,
8 and ordering her removed. We presume the parties’ familiarity with the underlying facts, the
9 procedural history, and the scope of the issues presented on appeal.

10 When the BIA agrees with the IJ’s conclusion that a petitioner is not credible and,
11 without rejecting any of the IJ’s grounds for decision, emphasizes particular aspects of that
12 decision, this Court reviews both the BIA’s and IJ’s opinions -- or more precisely, the Court
13 reviews the IJ’s decision including the portions not explicitly discussed by the BIA. *Yun-Zui*
14 *Guan v. Gonzales*, 432 F.3d 391, 394 (2d Cir. 2005). This Court reviews the agency’s factual
15 findings, including adverse credibility determinations, under the substantial evidence standard,
16 treating them as “conclusive unless any reasonable adjudicator would be compelled to conclude
17 to the contrary.” 8 U.S.C. § 1252(b)(4)(B); *see, e.g., Zhou Yun Zhang v. INS*, 386 F.3d 66, 73 &
18 n.7 (2d Cir. 2004). However, we will vacate and remand for new findings if the agency’s
19 reasoning or its fact-finding process was sufficiently flawed. *Cao He Lin v. U.S. Dep’t of Justice*,
20 428 F.3d 395, 406 (2d Cir. 2005); *Tian-Yong Chen v. INS*, 359 F.3d 121, 129 (2d Cir. 2004); *see*
21 *also Xiao Ji Chen v. U.S. Dep’t of Justice*, 434 F.3d 144, 158 (2d Cir. 2006) (agreeing with this
22 principle, but avoiding remand, in spite of deficiencies in an adverse credibility determination,

1 because it could be confidently predicted that the IJ would adhere to the decision were the case
2 remanded).

3 The IJ determined that portions of Lin's testimony lacked a sufficient level of detail,
4 specificity, and plausibility. The IJ first determined implausible Lin's claim that her mother
5 practiced Falun Gong in public despite the Chinese government's crackdown on the practice.
6 Next, the IJ found implausible that the police had any interest in persecuting Lin because of her
7 association with Falun Gong members. Specifically, the IJ relied on the following pieces of
8 information: the fact that the police focused their interrogation on her mother; that they had
9 placed Lin in an unsecured room for two hours while they interrogated Lin's mother; that they
10 allowed Lin to go to an unsecured bathroom without being escorted; and that the police had not
11 arrested or detained Lin's father, who lives with her mother. We see no reason to disturb the IJ's
12 findings here. *See Ming Xia Chen v. BIA*, 435 F.3d 141, 142 (2d Cir. 2006).

13 Lastly, the IJ did not believe that Lin's father had recently told her that the police were
14 still looking for her back in China, because Lin so testified only after being confronted with her
15 mother's affidavit and its lack of specificity. However, the IJ's recitation of this account does not
16 coincide with the record. Despite this discrepancy, the IJ's reasoning is nonetheless sound. Lin's
17 only corroborating evidence was that of her mother's affidavit, which provided little information
18 regarding the police's current interest in Lin's whereabouts. The only other evidence Lin offered
19 was her testimony of a phone conversation with her father that occurred just a few days prior to
20 the hearing. Given the IJ's adverse findings regarding Lin's credibility, such evidence fails to
21 sufficiently establish a well-founded fear of persecution and the IJ was thus correct in finding it
22 implausible.

1 _____Because Lin failed to carry her burden for asylum, she cannot establish her eligibility for
2 withholding of removal either. *See Abankwah v. INS*, 185 F.3d 18, 22 (2d Cir. 1999). Having
3 failed to establish an objectively reasonable fear of persecution, Lin necessarily failed to establish
4 a clear probability that her life or freedom would be threatened. *See Paul v. Gonzales*, 444 F.3d
5 148, 156 (2d Cir. 2006). In addition, the IJ properly rejected Lin’s CAT claim, holding that there
6 was no evidence in the record to warrant a finding that Lin was more likely than not to be
7 tortured in China. Because “both the scope of the IJ’s credibility finding and its fatal effect on
8 the factual basis of [Chen’s] CAT claim are readily apparent,” we uphold the IJ’s denial of that
9 claim. *Xue Hong Yang v. U.S. Dep’t of Justice*, 426 F.3d 520, 523 (2d Cir. 2005).

10 For the foregoing reasons, the petition for review is DENIED.

11 FOR THE COURT:

12 Roseann B. MacKechnie, Clerk

13 By: _____